

## University of Oklahoma College of Law University of Oklahoma College of Law Digital Commons

---

American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899

---

5-13-1892

In the Senate of the United States. Letter from the Acting Secretary of the Interior, relative to allotments to the Indians of the White Earth Agency in Minnesota

Follow this and additional works at: <https://digitalcommons.law.ou.edu/indianserialset>



Part of the [Indian and Aboriginal Law Commons](#)

---

### Recommended Citation

S. Exec. Doc. No. 99, 52nd Cong., 1st Sess. (1892)

This Senate Executive Document is brought to you for free and open access by University of Oklahoma College of Law Digital Commons. It has been accepted for inclusion in American Indian and Alaskan Native Documents in the Congressional Serial Set: 1817-1899 by an authorized administrator of University of Oklahoma College of Law Digital Commons. For more information, please contact [darinfox@ou.edu](mailto:darinfox@ou.edu).

IN THE SENATE OF THE UNITED STATES.

LETTER

FROM

THE ACTING SECRETARY OF THE INTERIOR,

RELATIVE TO

*Allotments to the Indians of the White Earth Agency in Minnesota.*

MAY 13, 1892.—Referred to the Committee on Indian Affairs and ordered to be printed.

DEPARTMENT OF THE INTERIOR,  
*Washington, May 12, 1892.*

SIR: I have the honor to transmit herewith a copy of a communication of the 20th ultimo, from the Commissioner of Indian Affairs, relative to allotments to the Indians of the White Earth Agency, Minnesota; copy of an opinion of 28th ultimo from the honorable Assistant Attorney-General for the Department of the Interior, to whom the matter was referred, and draft of a bill providing for an allotment of 160 acres each to the Indians of the White Earth Agency and to those who may remove to said reservation who are entitled to take an allotment under Article VII of the treaty with the Chippewas of April 18, 1867.

In view of the promises made to these Indians by the Chippewa Commission, I have the honor to recommend that this matter receive the early and favorable action of Congress.

I have the honor to be, very respectfully,

GEO. CHANDLER,  
*Acting Secretary.*

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,  
OFFICE OF INDIAN AFFAIRS,  
*Washington, April 20, 1892.*

SIR: In pursuance of the authority and direction contained in the act of Congress approved January 14, 1889 (25 Stat., 642), entitled "An act for the relief and civilization of the Chippewa Indians, of Minnesota," three Commissioners were appointed by the President on February 26, 1889, as therein authorized and directed, namely, Henry M. Rice, of Minnesota; Martin Marty, of Dakota, and Joseph B. Whiting, of Wis-

consin, to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota, for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in the State of Minnesota, except the White Earth and Red Lake Reservations, and to all and so much of these two reservations as in the judgment of said Commission is not required to make and fill the allotments required by said act and existing acts.

Under date of May 31, 1889, this office transmitted to said Commission, for their guidance in accomplishing the work for which they had been appointed, certain instructions which had been approved by the Department under date of the 24th of the same month. With reference to the allotments to be made to said Indians under the provisions of the said act of January 14, 1889, the Commission was instructed as follows:

The chief objects sought to be attained by the act, briefly stated, are:

The removal to and consolidation upon the White Earth Reservation of all the Chippewa Indians in Minnesota, except the Red Lake Indians, and the allotment of lands in severalty to them and to the White Earth Indians, on said White Earth Reservation, and to the Red Lake Indians on their own, the Red Lake Reservation, all such allotments to be made in conformity to the provisions of the general allotment act, approved February 8, 1887 (24 Stats., 388), three copies of which act are herewith inclosed.

With reference to the allotments to be made to said Indians, section 3 of said act of January 14, 1889, provides as follows:

That as soon as the census has been taken and the cession and relinquishment has been obtained, approved, and ratified, as specified in section one of this act, all of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said commissioners, be allotted lands in severalty to the Red Lake Indians on Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes;" and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed for all allotments under this act: *Provided, however,* That the amount heretofore allotted to any Indian on White Earth Reservation shall be deducted from the amount of allotment to which he or she is entitled under this act: *Provided further,* That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

Under the provisions of Article VII of the treaty of March 19, 1867 (16 Stat., 719), between the United States and the Chippewa Indians of Mississippi, the Indians, parties thereto, were entitled to certificates of allotment of 40, 80, 120, or 160 acres of land accordingly as he had placed under cultivation 10, 20, 30, or 40 acres of land. It does not appear, however, under the provisions of said treaty, that an Indian who did not place at least 10 acres of land under cultivation was entitled to any allotment of land whatever.

Said Article VII is as follows:

As soon as the location of the reservation set apart by the second article hereof shall have been approximately ascertained and reported to the office of Indian Affairs, the Secretary of the Interior shall cause the same to be surveyed in conformity to the system of Government surveys, and whenever, after such survey, any Indian, of the bands parties hereto, either male or female, shall have 10 acres of land under cultivation, such Indian shall be entitled to receive a certificate, showing him to be entitled to the 40 acres of land, according to legal subdivision, containing the said 10 acres, or the greater part thereof, and whenever such Indian shall have an additional 10 acres under cultivation, he or she shall be entitled to a

certificate for additional 40 acres, and so on, until the full amount of 160 acres may have been certified to any one Indian; and the land so held by any Indian shall be exempt from taxation and sale for debt, and shall not be alienated except with the approval of the Secretary of the Interior, and in no case to any person not a member of the Chippewa tribe.

The provision in said section 3 of the act of January 14, 1889, namely, "and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with like tenure and condition prescribed for allotments under this act," referred to the allotments that had been made under the provisions of said Article VII of the treaty of March 19, 1867, above quoted.

Aside from the allotments already made under the provisions of said Article VII, said section 3 of the act of January 14, 1889, provides that all other allotments should be made "in conformity with the act of February 8, 1887, entitled 'An act for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes.'"

Section 1 of the general allotment act of February 8, 1887 (24 Stat., 388), provides as follows:

That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon in quantities as follows:

To each head of a family, one-quarter of a section;

To each single person over eighteen years of age, one-eighth of a section;

To each orphan child under eighteen years of age, one-eighth of a section; and

To each other single person under eighteen years now living, or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: *Provided*, That in case there is not sufficient land in any of said reservations to allot lands to each individual of the classes above named in quantities as above provided, the lands embraced in such reservation or reservations shall be allotted to each individual of each of said classes pro rata in accordance with the provisions of this act: *And provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act: *And provided further*, That when the lands allotted are only valuable for grazing purposes an additional allotment of such grazing lands, in quantities as above provided, shall be made to each individual.

Prior, however, to the time when the Chippewa Commission was prepared to make allotments to the Indians on the White Earth Reservation, an amendment to the general-allotment act was passed. This is the act of February 28, 1891 (26 Stat., 794). Sections 1 and 2 of said act provide, respectively:

That section one of the act entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," approved February eighth, eighteen hundred and eighty-seven, be, and the same is hereby, amended so as to read as follows:

Sac. 1. That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land: *Provided*, That in case there

is not sufficient land in any of said reservations to allot lands to each individual in quantity, as above provided, the land in such reservation or reservations shall be allotted to each individual pro rata, as near as may be, according to legal subdivisions: *Provided further*, That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty to certain classes in quantity in excess of that herein provided, the President, in making allotments upon such reservation, shall allot the land to each individual Indian of said classes belonging thereon in quantity as specified in such treaty or act, and to other Indians belonging thereon in quantity as herein provided: *Provided further*, That where existing agreements or laws provide for allotments in accordance with the provisions of said act of February eighth, eighteen hundred and eighty-seven, or in quantities substantially as therein provided, allotments may be made in quantities as specified in this act, with the consent of the Indians, expressed in such manner as the President, in his discretion, may require: *And provided further*, That when the lands allotted, or any legal subdivision thereof, are only valuable for grazing purposes, such lands shall be allotted in double quantities.

SEC. 2. That where allotments have been made in whole or in part upon any reservation under the provisions of said act of February eighth, eighteen hundred and eighty-seven, and the quantity of land in such reservation is sufficient to give each member of the tribe eighty acres, such allotments shall be revised and equalized under the provisions of this act: *Provided*, That no allotment heretofore approved by the Secretary of the Interior shall be reduced in quantity.

Under date of July 11, 1891, this office instructed the Commission, with reference to making allotments to said Indians, as follows:

You will observe, from a study of the act above referred to, that it becomes the duty of the Commission—

(1) To secure the election of every Chippewa Indian in Minnesota (except those upon the Red Lake and White Earth Reservations) entitled to an allotment under the act, as to whether such Indian will remove to the White Earth Reservation and take an allotment thereon, or remain and take an allotment upon the reservation where he or she now belongs.

(2) To effect the removal to the White Earth Reservation of all the Indians entitled to allotments thereon *who elect to go*.

(3) To cause allotments to be made upon the White Earth Reservation to all Indians entitled thereto, and also to allot the lands upon each reservation to such Indians as elect to remain where they now are.

The Commission should visit each reservation occupied by Indians entitled to remove to White Earth, and secure the election of said Indians upon the matter of removal. Such as consent to go should be removed as fast as suitable accommodations can be provided for them, and settled by the Commission upon the White Earth Reservation.

It will be observed that the act of Congress approved February 28, 1891 (26 Stat., 794), amendatory of the general-allotment act of 1887, copy herewith, provides for the allotment of 80 acres to each Indian located upon the reservation where allotments are to be made. There is a provision in said act which authorizes allotments to be made thereunder with the consent of the Indians, expressed in such manner as the President may require, to such Indians as are entitled to allotments under existing agreements or laws. In view of the fact that the Indians as a tribe will receive more land if they shall take their allotments under the said amendatory act than if such allotments were taken under the general-allotment act of 1887, and as the Indians elsewhere generally desire to have their allotments made under said former act, it is deemed best in the present case to settle such Indians as are removed to White Earth upon allotments of 80 acres each. The consent of the Indians so removed can, it is believed, be legally secured under the act in such manner as the President may require, after they shall have removed to White Earth.

The Commission should carefully and patiently explain to the Indians the advantages of removal to White Earth, where they can have the benefits of closer association, and be under the more direct supervision and care of the Government; and they should also be informed that it is the purpose of the act, and the desire of the Government, to effect their removal to the White Earth Reservation, if they can make up their minds to remove there and be contented. You will, however, give them to understand that *they have the right, under the act, to take allotments and remain upon the reservations where they now are, if they shall not be satisfied to go to White Earth.*

Before making any allotments to the Indians who elect to remain upon the reservation where they now are, the commission should complete the work of the removal and settlement of such as elect to go the White Earth Reservation.

Under date of August 17, 1891, the office further instructed the Commission relative to making the allotments as follows:



In compliance with your request for further instructions relative to the allotments to be made by the Commission, your attention is invited to the following provisions of Article VII of the treaty with the Chippewas of the Mississippi of March 19, 1867 (16 Stat., 721):

As soon as the location of the reservation set apart by the second article hereof shall have been approximately ascertained and reported to the office of Indian Affairs, the Secretary of the Interior shall cause the same to be surveyed, in conformity to the system of Government surveys, and whenever, after such survey, any Indian of the bands parties hereto, either male or female, shall have 10 acres of land under cultivation, such Indian shall be entitled to receive a certificate, showing him to be entitled to the 40 acres of land, according to legal subdivision, containing the said 10 acres, or the greater part thereof; and whenever such Indian shall have an additional 10 acres under cultivation, he or she shall be entitled to a certificate for additional 40 acres, and so on, until the full amount of 160 acres may have been certified to any one Indian; and the land so held by any Indian shall be exempt from taxation and sale for debt, and shall not be alienated, except with the approval of the Secretary of the Interior, and in no case to any person not a member of the Chippewa tribe.

In all cases where Indians affected by the said article of the treaty had cultivated land and had either received or were entitled to receive certificates covering the same prior to January 14, 1889, the date of the approval of the act ratifying the Chippewa agreement above referred to, the holdings of such Indians should be respected by the Commission, and allotments should be made in accordance with the said provisions of the treaty.

In all other cases the Commission will proceed with the work of making allotments required, in accordance with your instructions of July 11 last.

The Commissioners commenced to make allotments to the Indians on the White Earth Reservation on December 9, 1891, allotting to each person, irrespective of age, 80 acres, in accordance with instructions contained in said office letters of July 11 and August 17, 1891, and on February 9, 1892, the first schedule of 108 allotments was transmitted to this office. The schedule was, however, returned to the Commission on March 11, current, because of some slight informalities.

It now appears that the said Indians are not willing to accept an allotment of 80 acres each, and emphatically decline to accept the same, and in council assembled on the White Earth Indian Reservation on the 25th day of February, current, the Chippewas of the Mississippi, residing and belonging to said reservation, appointed a committee, as their agents and delegates, to visit this city and submit to the authorities of the Interior Department certain propositions. Accordingly, on the 15th instant, said delegates filed in this office their protest against accepting the allotment of 80 acres each.

Said delegates claim that the Chippewa Indians of Mississippi, by virtue of the said treaty of March 19, 1867, were, under certain conditions, each entitled to an allotment of 160 acres; that the provisions of section 3 of the said act of January 14, 1889, do not repeal Article VII of said treaty of March 19, 1867; that the Chippewa Commission, in negotiating with them for the cession and relinquishment of their lands, unconditionally promised them—each man, woman, and child—an allotment of 160 acres each, and that they would not have signed said agreement but for the promises made them by the Commission respecting the amount of land that would be allotted to them, respectively, under the provisions of said act.

Said paper, which is in the nature of an argument, is transmitted herewith.

The promises and representations made by the Commission are reported in House of Representatives Ex. Doc. No. 247, Fifty-first Congress, first session, copy herewith.

With reference to these promises the report shows:

Page 86, Mr. RICE. Now, we will go back to the treaty of 1867. This land was reserved under certain conditions, of which you are well aware, it being provided that you could have no land until you had complied with the conditions in regard to mak

ing improvements. Although twenty years have passed since that treaty was concluded, I am informed that a great many of you have not yet taken allotments. Under the present act, as soon as these negotiations shall have received the approval of the President, we are authorized to give to every man, woman, and child 160 acres of land as an allotment, and in case of the death of any person who has received such an allotment, the land passes to his or her legal representatives.

Page 89, Bishop MARTY. Congress is in the position of a man with an old house; he don't like to spend money on it, but if Congress sees you are willing to start a new foundation they will send you the money. Congress would, however, be astonished if, after signing the treaty of three years ago, which was very much less favorable to you than this, you would decline to accept this one. By the former treaty you would receive only 160 acres per head of family, and the balance of you 80 or 40 acres each, but under this act every man, woman, and child gets 160 acres. Would you take less when more is offered?

When you lived by hunting you needed more land, but as farmers this act gives you more than you can cultivate.

Page 91, Bishop MARTY. It is a compliment, as it indicates that the Indian comes to maturity sooner than a white man. Every one gets 160 acres, even the little child, and that is not the case among the whites.

Page 93, Mr. RICE. Here it is in very plain language: "That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act."

Page 104, Mr. RICE: Our duty under instructions is to allot to each individual, each man, woman, and child, 160 acres, with good title, so that when one dies after having taken such an allotment, the property will go to the family.

It appears from what is said by Mr. Rice, as reported on page 93 of said document, that the commission promised the Indians of the White Earth Reservation 160 acres of land each, because of the interpretation given the first proviso of the general allotment act, construed in connection with Article VII of the said treaty of March 19, 1867; that is, the commission construed that article as giving the Mississippi Chippewas 160 acres each without the precedent condition of the cultivation of 10 acres for each 40 acres allotted.

These commissioners were appointed by the President and were invested with authority to present to the Indians the said act of Congress, and to secure their consent to the cession and relinquishment of their title to certain of their lands as in the act specified. The Indians regarded them as being high in authority, as they had a right to, and relied implicitly on their representations; they thought the commissioners had the power to fulfill all their promises. Relying on these promises, the Indians signed the agreement. The delegates presenting the petition above referred to represent that they would not have signed the agreement had they not been promised an allotment of 160 acres each. They now emphatically decline to accept an allotment of 80 acres each.

It appears that the promises of the commission for an allotment of 160 acres each were made specially to the Indians of the White Earth Reservation.

By act of Congress approved May 29, 1872 (17 Stat., 189), the Indians on the White Earth Reservation were paid \$25,000 in consideration of the settlement of the Ottetail band of pillagers upon the White Earth Reservation, with equal rights in respect to the lands within its boundaries. It necessarily follows that the said Indians are entitled to the same allotments as the Mississippi Chippewas.

By act of Congress approved June 24, 1874 (18 Stat., 174), the Mississippi bands of Chippewa Indians were paid \$25,000 for one township of land (township 144, range 42) on the White Earth Reservation, for the use and benefit of the Pembina band of Chippewas. But inasmuch as the promises that were made by the Chippewa commission were

made to all the Indians of the White Earth Reservation, it is the opinion of this office that the Pembinas should be given the same allotments as the other Indians residents of the White Earth Reservation.

The population of the several reservations (except the Red Lake Reservation, the Red Lake Indians being required to take their allotments on that reservation) is as follows:

Mississippi Chippewas at White Earth .....	1, 202
Mississippi Chippewas of Gull Lake at White Earth.....	277
Mississippi Chippewas, at White Oak Point.....	656
Mille Lac Band of Mississippi Chippewas (who have no reservation).....	973
<b>Total Mississippi Chippewas .....</b>	<b>3, 108</b>
Otter Tail Pillagers at White Earth.....	645
Pembina Chippewas at White Earth .....	242
Leech Lake Pillagers at Leech Lake.....	1, 156
Cass Lake and Winnebagoishish Lake Pillagers at Cass Lake and Winnebagoishish Lake .....	411
Lake Superior Chippewas at Boise Fort .....	800
Lake Superior Chippewas at Grand Portage.....	323
Lake Superior Chippewas at Fond du Lac.....	761
<b>Total.....</b>	<b>7, 446</b>

As will be seen by the above table, the total population now on the White Earth Reservation, including the Mille Lacs, who have no reservation, is 3,339. This office has information from the Chippewa Commission to the effect that but few (if any) Indians will remove from the reservations where they now are and take allotments on the White Earth Reservation. This does not apply to the Mille Lacs, as they have no reservation.

The area of the White Earth Reservation at present is 703,512 acres. To allot 160 acres each to the above number (3,339) will require 534,240 acres; this would leave a balance of 169,272 acres. A portion of the land within the White Earth Reservation is not suitable for agricultural purposes by reason of small lakes and swamps which abound, and would probably not be selected for an allotment; but making a reasonable allowance for this character of land it is probable that there would still remain sufficient good land to make all the allotments provided for (at the rate of 160 acres each) and leave a small surplus of good agricultural land.

Under date of March 28, current, this office addressed a letter to each of the original members of the Chippewa Commission, stating that in view of the demand that is now made by the Indians of the White Earth Reservation for an allotment of 160 acres each—to each man, woman, and child without distinction—based upon the promises of the Chippewa Commission as contained in the published report of their proceedings, as above quoted, this office respectfully requests you to state upon what law or treaty, or upon what construction of laws and treaties you based the promises made to the Indians as contained in said report, and precisely what your understanding of the matter was with reference to the amount of allotment to which each Indian was entitled, and what representations in relation to the amount of the allotments you did in fact make, and what you intended the Indians should understand by the representations made by you; and you are also respectfully requested for an expression of opinion as to whether it would be expedient and desirable to ask for a modification of the law so as to comply with the present demand of the Indians of the White Earth Reservation.



This office is now in receipt of a reply to said letter from each of the original Commissioners. They substantially agree as to their understanding of the laws and treaties upon which the promises were based. They state that they made the promises to the Indians of the White Earth Reservation as contained in their published report; that they intended the Indians should understand by the representations made exactly what they said, viz, that those who were parties to the treaty of 1867 should each have an allotment of 160 acres; and that they based these promises on what they claim is a correct construction of the treaty of March 19, 1867, the act of February 8, 1887, and the act they were presenting to the Indians, the act of January 14, 1889. They further state that if they were in error as to the proper construction of said laws and treaties, in view of the unsettled condition of affairs on the White Earth Reservation, and the retarding of the work of the Chippewa Commission occasioned by the refusal of the Indians to accept their allotments as contained in office instructions of July 11 and August 17, 1891, to the Commission, they think it expedient and desirable for a modification of the law so as to comply with the present demand of the Indians.

The said communications of the original Commissioners, Henry M. Rice, Martin Marty, and Joseph B. Whiting, are inclosed herewith.

In view of said office instructions of July 11 and August 17, 1891, given to the present Chippewa Commission, to allot to each person 80 acres, except in cases where Indians affected by Article VII of the treaty of March 19, 1867, had cultivated land and had either received or were entitled to receive certificates covering the same prior to January 14, 1889, the date of the approval of the act providing for the Chippewa agreement; and the construction placed upon the laws and treaties then in force between the United States and the Indians of the White Earth Reservation by the Commission that presented to them for their agreement the said act of January 14, 1889, and the promises made the Indians by reason of their construction thereof; and the refusal of the Indians of said reservation to accept allotments of 80 acres each, and their demand for an allotment of 160 acres each, based upon the promises of the Chippewa Commission, this office respectfully requests to be instructed as to the proper course to pursue in the matter.

In case the Department holds that the Commission was in error as to the proper construction of the said laws and treaties, and that there is no provision of law for the allotment of 160 acres each to the Indians of the White Earth Reservation without the precedent condition of cultivation and the receipt of a certificate therefor, as provided in said Article VII of the treaty of March 19, 1867, this office would respectfully recommend the preparation of and the submission to Congress of a bill providing for the allotment of 160 acres each to all the Indians affected by the said act of January 14, 1889, in accordance with the promises of the Commission made to the Indians of the White Earth Reservation.

In view of the retarding of the work of the Chippewa Commission in making allotments by reason of the present demand of said delegation, this office respectfully requests early action herein.

Very respectfully, your obedient servant,

T. J. MORGAN,  
*Commissioner.*

The Hon. SECRETARY OF THE INTERIOR.

*Allotment to Chippewa Indians on the White Earth Reservation, Minn.*

DEPARTMENT OF THE INTERIOR,  
Washington, April 28, 1892.

SIR: I have the honor to acknowledge the receipt, by your reference of the 23d instant, of a communication with accompanying papers from the Commissioner of Indian Affairs, dated the 20th instant, relative to the quantity of land to be allotted to the Chippewa Indians of Minnesota under the provisions of the act of Congress approved January 14, 1889 (25 Stat., 642).

By said reference my opinion is asked "as to the proper construction of the law authorizing these allotments, and particularly whether there may not be allotted 160 acres to each under the construction and promises of the Commissioners who negotiated with the Indians."

By said act of 1889 the President appointed three Commissioners to negotiate with all the different bands or tribes of Chippewa Indians in the State of Minnesota for the complete cession and relinquishment in writing of all their title and interest in and to all the reservations of said Indians in said State, except the White Earth and Red Lake reservations, and to all and so much of these two reservations as in the judgment of said Commissioners is not required for allotments under existing laws.

On March 19, 1867, the United States concluded a treaty with the Chippewa Indians of the Mississippi, which was ratified, with an amendment, on April 8, 1867, and proclaimed on the 18th of the same month (16 Stat., 710). By Article II thereof there were set apart certain lands for farming purposes, and by Article VII of said treaty (p. 721) it was provided:

As soon as the location of the reservation set apart by the second article hereof shall have been approximately ascertained and reported to the office of Indian Affairs, the Secretary of the Interior shall cause the same to be surveyed in conformity to the system of Government surveys, and whenever, after such survey, any Indian of the bands parties hereto, either male or female, shall have 10 acres of land under cultivation, such Indian shall be entitled to receive a certificate showing him to be entitled to the 40 acres of land, according to legal subdivision, containing the said 10 acres or the greater part thereof, and whenever such Indian shall have an additional 10 acres under cultivation, he or she shall be entitled to a certificate for additional 40 acres, and so on, until the full amount of 160 acres may have been certified to any one Indian; and the land so held by any Indian shall be exempt from taxation and sale for debt, and shall not be alienated except with the approval of the Secretary of the Interior, and in no case to any person not a member of the Chippewa tribe.

The general allotment act of Congress approved February 8, 1887 (24 Stat., 388), prescribes the amount of land to be allotted thereunder as follows:

To each head of a family, one-quarter of a section;  
To each single person over eighteen years of age, one-eighth of a section;  
To each orphan child under eighteen years of age, one-eighth of a section; and,  
To each other single person under eighteen years now living or who may be born prior to the date of the order of the President directing an allotment of the lands embraced in any reservation, one-sixteenth of a section: \* \* \* *And provided further*, That where the treaty or act of Congress setting apart such reservation provided for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act.

By section 3 of said act of 1889 it is provided that after the census of the Indians has been taken and the cession made as required by section 1 of said act—

All of said Chippewa Indians in the State of Minnesota, except those on the Red Lake Reservation, shall, under the direction of said Commissioners, be removed to and take up their residence on the White Earth Reservation, and thereupon there shall, as soon as practicable, under the direction of said Commissioners, be allotted lands in severalty to the Red Lake Indians on the Red Lake Reservation, and to all the other of said Indians on White Earth Reservation, in conformity with the act of February eighth, eighteen hundred and eighty-seven, entitled "An act for the allotment of lands in severalty to Indians of the various reservations, and to extend protection of the laws of the United States and the Territories over the Indians, and for other purposes, and all allotments heretofore made to any of said Indians on the White Earth Reservation are hereby ratified and confirmed with the like tenure and condition prescribed by all allotments under this act.

By section 1 of the act of February 28, 1891 (26 Stat., 794), said act of February 8, 1887, was amended so as to read—

That in all cases where any tribe or band of Indians has been, or shall hereafter be, located upon any reservation created for their use, either by treaty stipulation or by virtue of an act of Congress or executive order setting apart the same for their use, the President of the United States be, and he hereby is, authorized, whenever in his opinion any reservation, or any part thereof, of such Indians is advantageous for agricultural or grazing purposes, to cause said reservation, or any part thereof, to be surveyed, or resurveyed, if necessary, and to allot to each Indian located thereon one-eighth of a section of land;

with the same proviso relative to the allotment of lands where the amount subject thereto for each allottee was greater than that designated in said amended section.

In the instructions to said Commissioners, they were advised that under this amendatory section of 1891 the Indians, as a tribe, would receive more land than under said general allotment act of 1887, and that it was considered best to allot 80 acres to each of those Indians who consent to remove to White Earth, but that if they so desire, "they have the right under the act to take allotments and remain upon the reservation where they now are, if they shall not be satisfied to go to White Earth." Subsequently, on August 17, 1891, at the request of the Commissioners, they were further advised by the Indian Office, quoting said Article VII, that—

In all cases where Indians affected by the said article of the treaty had cultivated land and had either received, or were entitled to receive, certificates covering the same prior to January 14, 1889, the date of the approval of the act ratifying the Chippewa agreement, above referred to, the holdings of such Indians should be respected by the Commission, and allotments should be made in accordance with the said provisions of the treaty.

In all other cases the Commission will proceed with the work of making the allotments required, in accordance with your instructions of July 11th last.

It appears that under said instructions allotments of 80 acres were made to some of the Indians on the White Earth Reservation which they decline to accept, claiming that by said Article VII the Chippewas of the Mississippi are each entitled to an allotment of 160 acres. The Indians further claim that the record so shows that the Commissioners promised to each man, woman, and child an allotment of 160 acres each, and they allege that if such promise had not been made they would not have signed said agreement, and they now absolutely decline to accept allotments of 80 acres each.

The Commissioner of Indian Affairs finds that the promise of allotments of 160 acres each was made specially to the Indians of the White Earth Reservation, and inasmuch as the promise was made to all the Indians on said White Earth Reservation the Pillagers and Pem-

binas settled thereon should be given allotments of equal quantity with the other Indians on said reservation. He further asks, in view of the action of the Department and the Commission above recited, "to be instructed as to the proper course to pursue in the matter," and recommends that, if it be held that said construction of the Commissioners as to the quantity of land to which each Indian is legally entitled is erroneous, a bill should be prepared and submitted to Congress providing for the allotment of 160 acres each to all the Indians affected by the said act of January 14, 1889, in accordance with the promises of the Commission made to the Indians of the White Earth Reservation. There can be little serious question in my judgment as to the quantity of land each Indian mentioned is entitled to under said Article VII. The quantity was expressly stated and the conditions precedent, namely, cultivation of certain amounts of land, were explicitly defined.

The Indians were not guaranteed absolutely the allotment of any number of acres, but upon condition that they had placed under cultivation 10 acres or more of land, they should receive a certificate for 40 acres for every 10 acres or greater part thereof, so placed under cultivation, not exceeding 160 acres for any one Indian. The act of 1889 expressly protected the allotments made under said Article VII, and declared that all other allotments should be made under said act of 1887, which was subsequently amended by said act of 1891.

The instructions to the Commission, dated July 1 and August 17, 1891, were approved by the Department on July 13 and August 19, same year, and correctly construe said acts as to the quantity of land the Indians were entitled to under said acts. These instructions were express adjudications of the Department after the report of the Commissioners had been received, giving in detail all of their proceedings in the premises.

There is no principle of law better settled than that the legislative department of the Government alone has the power of disposition of the public lands of the United States and to regulate intercourse "with the Indian tribes." Article I, section 8, clause 3, and Article IV, section 3, clause 2, of the Constitution of the United States; *Bagnell vs. Broderick* (13 Peters, 436); *United States vs. Gratiot* (14 Peters, 526); *Pollard vs. Hagan* (3 How., 212); *Irving vs. Marshall* (20 How., 558); *Gibson vs. Choteau* (13 Wall., 92, 99); *Van Brocklin vs. State of Tennessee* (117 U. S. R., 151, 168).

The Commissioners had no authority to promise the Indians a larger allotment than the law prescribed, and any such promises would not bind the United States. (106 U. S. R., 196, 230.)

I am therefore of opinion, and so advise you that under the proper construction of said acts there can not be allotted to each Indian 160 acres of land.

The representations of the Commissioners were undoubtedly made in good faith and under a construction of the law which, in my view, is erroneous. There is abundance of land reserved, according to the letter of the Indian Commissioner, to give these Indians 160 acres as promised, and it would seem to be equity and justice that additional legislation be had granting the right to allot the Indians 160 acres without conditions.

The papers submitted are herewith returned.

Very respectfully,

GEORGE H. SHIELDS,  
Assistant Attorney-General.

The Hon. SECRETARY OF THE INTERIOR.



*The Chippewas of the Mississippi, claimants, vs. The United States.*

WASHINGTON, D. C., March 15, 1892.

The Hon. COMMISSIONER OF INDIAN AFFAIRS:

Sir: In a council assembled upon the White Earth Indian Reservation on the 25th day of February, 1892, the Chippewas of the Mississippi, residing and belonging to the said reservation, constituted and appointed, as their agents and delegates, the undersigned persons, to proceed to the city of Washington and submit to the authorities of the Interior Department the following propositions:

The Mississippi bands of Chippewa Indians emphatically decline to accept the allotment of 80 acres of land each, which the commission, created by an act of Congress proclaimed February 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," propose giving them. They demand that allotments of 160 acres of land shall be made to them, in accordance with the promises made by the aforesaid commission when it negotiated with the said Chippewas for their consent to the aforesaid act of February 15, 1889, and in conformity with former acts of Congress and treaty stipulation.

In support of the claims of the Mississippi bands of Indians residing and belonging to the White Earth Reservation, the undersigned agents and delegates of said Indians present the following treaty stipulation and acts of Congress:

First. Under the seventh article of a treaty between the Chippewas of the Mississippi and the United States proclaimed April 18, 1867, each and every member of the said bands of Indians may take upon the White Earth Reservation an allotment of 160 acres of land under certain conditions, namely, that upon the improvements of 40 acres of land the person making such improvements shall receive from the Government of the United States a certificate for an allotment or 160 acres of land.

Second. Section 1 of an act of Congress approved February 8, 1887, entitled "An act for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and Territories over the Indians, and for other purposes, provided "that when the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President, in making allotments upon such reservations, shall allot the lands to each individual Indian belonging thereon in quantity as specified in such treaty or act."

Third. Section 3 of the act of Congress approved February 14, 1889, entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," provides that the allotment of lands to the said Indians "shall be made in conformity with an act of Congress approved February 8, 1887, entitled 'An act for the allotment of lands in severalty to the Indians on the various reservations.'"

Fourth. The promises of the Commission created under the act of February 14, 1889, are as follows: (See pages referred to of the Commissioners' Report to the Commissioner of Indian Affairs.)

Page 86. Chairman RICE. "Now, we will go back to the treaty of 1867. This land was received under certain conditions of which you are all well aware, it being provided that you could have no land until you had complied with the conditions in regard to making improvements. Although 20 years have passed since that treaty was concluded, I am informed that a great many of you have not yet taken allotments. Under the present act, as soon as these negotiations shall have received the approval of the President, we are authorized so give to every man, woman, and child 160 acres of land as an allotment."

Page 89. Bishop MARTY. "Congress is in the position of a man with an old house; he doesn't like to spend money on it, but if Congress sees you are willing to start a new foundation they will send you the money. Congress would, however, be astonished if, after signing the treaty of three years ago, which was very much less favorable to you than this, you would decline to accept this one. By the former treaty you would receive 160 per head of family and the balance of your 80 acres or 40 acres each, but under this act every man, woman, and child gets 160 acres. Would you take less when more is offered?"

Page 93. Chairman RICE. "Here it is in very plain language: That when the treaty or act of Congress setting apart each reservation provides for the allotment of lands in severalty, in quantities in excess of those herein provided, the President in making allotments upon such reservation shall allot the land to such individual Indians belonging thereon in quantity as specified in such treaty or act, page 104."

Chairman RICE. "Our duty under instructions is to allot to each individual, each man, woman, and child, 160 acres, with good title, so that when one dies after having taken such allotment the property will go to the family."

This delegation contends that the act of Congress of February 14, 1889, doesn't repeal the treaty stipulation of 1867; and while in connection with the general allotment act of 1887 the allottees are relieved of the improvement clause of that stipulation, the quantity of land which it provides shall be allotted is not disturbed by the subsequent act of Congress.



In our opinion the promises of the Commission that negotiated with the Minnesota Chippewas for their consent to the act of February 14, 1889, should be taken largely into consideration in deciding the claims of the Mississippi Indians to allotments of 160 acres of land.

If that Commission had not construed the acts of Congress and their instructions from the Interior Department as authorizing them to allot 160 acres of land to each member of the Mississippi families at White Earth, and added their promises that allotments would be made accordingly, those Indians never would have consented to the provisions of the act of February 14, 1889; the allotment of lands was one of the principal considerations of the acceptance of that act, and we insist that the promises made by the Government, through its agents, that the Mississippi Indians living upon the White Earth Reservation shall receive allotments of land of 160 acres each, shall be fulfilled.

WHITE CLOUD, Chief.  
WAH BAU NAH QUOL (his x mark).  
MAH KAH KEENCE (his x mark).  
SONG WAY (his x mark).  
SHARLEY (his x mark).  
ROBERT MORRISON, Interpreter.

Witnesses to marks and members of the delegations—

FRED SMITH.  
CHARLES WRIGHT.  
THEO. H. BEAULIEN.  
GUS. H. BEAULIEN.

BISHOP'S HOUSE, SIOUX FALLS, S. DAK.,  
April 4, 1892.

SIR: In reply to your communication of March 28, allow me to state that Senator Rice, Dr. Whiting, and myself were convinced of the benevolent intention of the act of Congress which we were to recommend to the Chippewas for their acceptance. The wording of its first sentence showed that it was not to supersede any former agreements, since it declared that the allotments are to be made "as required by this and existing acts." We had no reason to consider the privilege repealed which had been conferred upon the Mississippi bands by article 7 of the treaty of 1867.

We knew that the Indians are the real owners of the land and that the question was not to give them anything new, but only to determine how much of their property they would retain and how much they would sell. They are fully determined to keep that portion in their own hands and we were only anxious to help them in making the best possible use of it. Senator Rice had been in friendly intercourse with them for forty-two years, had negotiated several of their former treaties, and expected to put them by this last act on the high road of civilization and prosperity. It would have been well to mention the privilege of the Mississippi band in section 3 of the act, but it may be recognized and acted upon without an express modification of the law, as long as the treaty of 1867 is considered as one of the "existing acts."

Most respectfully,

M. MARTY.

Hon. T. J. MORGAN,  
*Commissioner of Indian Affairs.*

JANESVILLE, WIS., April 7, 1892.

SIR: I have your favor of March 28 in relation to the matter of the allotment of the lands made to the Mississippi Chippewas of White Earth Reservation under the act of Congress approved January 14, 1889, in which you ask me as one of the commissioners making such allotments: First, "Upon what construction of law and treaties you based the promise made to the Indians as contained in said report, and precisely what your understanding of the matter was in reference to the amount of allotment to which each Indian was entitled, and what representations in relation to the amount of allotment you did in fact make, and what you intended the Indians should understand by the representations made by you;" and second, "For an expression of opinion as to whether it would be expedient and desirable to ask for a modification of the law so as to comply with the present demand of the Indians of White Earth Reservation."

The representations made by us to the Chippewa Indians are correctly quoted in your letter to me from our report to you, contained on pages 86, 89, 93, and 104 of our report. My understanding was and is that each Indian, man, woman, and child, is entitled to 160 acres of land under the act of Congress approved January 14, 1889, and article 7 of the treaty between the Chippewas of the Mississippi and the United States, proclaimed April 18, 1867. The proper construction of this law and the treaty seemed to us to be beyond mistake. The act of Congress of January 14, 1889, distinctly says:

"That where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty in quantities in excess of those herein provided, the President in making allotments upon such reservation shall allot the lands of each individual Indian belonging thereon in quantity as specified in such treaty or act."

The treaty of 1867 distinctly provides in Article 7 for the allotment of 160 acres of land to each Indian, without regard to sex or age, but under certain conditions of tillage, etc.

These conditions and provisions, it seems to me, are distinctly waived in the act of 1889 when it says that where "the allotment of lands in severalty in quantities in excess of those herein provided," shall be allotted "to each individual Indian belonging thereon in quantity as specified in such treaty." Here is a distinct waiver of all conditions of tillage or anything else and provides that the quantity as specified shall be allotted to each individual Indian. Had the Congress intended that the burdens under which allotments were to be made by the treaty of 1867 were to be continued in the allotments under the act of 1889 it ought, and would, have so stated in pertinent language in the act of 1889; but on the contrary it provides only for the "quantity as specified in such treaty," which is 160 acres to "each individual Indian."

As to your second question as to whether it would be "expedient and desirable to ask for a modification of the law," I must say that it at no time has appeared to me that any modification of the law of 1889 is necessary. In connection with the treaty of 1867 it speaks for itself. If, however, the commission has been in error in determining this question under the treaty and the act, I think the faith of the Government is so far pledged that the demand of the Indians of White Earth Reservation must be complied with by the Government, even to the extent of additional legislation, if such legislation shall be deemed necessary by the legal advisers of the Government.

Very respectfully,

JOSEPH B. WHITING.

Hon. T. J. MORGAN,  
*Commissioner of Indian Affairs,  
Department of the Interior, Washington, D. C.*

ST. PAUL, MINN., April 4, 1892.

SIR: In reply to your communication of March 28, ultimo (lands), I have to say that by the provision of Article VII of the treaty of March 19, 1867 (16 Stat., 719), between the United States and the Chippewa Indians, the Indians were to receive, each, patents to 160 acres, upon certain conditions, which conditions, whether complied with or not, did not affect the United States, neither did they the Indians, except so far as to allot 160 acres in severalty, they holding, in their tribal relations, all that remained of the thirty-six townships which they received from the Government in exchange for about 2,000,000 acres of far more value, acre for acre. Under this treaty some had already complied with the conditions and received patents therefor; but, as the time for complying with the conditions imposed was limitless, and no penalties attached, forfeiture could not be anticipated or enforced.

The act of February 8, 1887, section 1, authorizing allotments of 160, 80, and 40 acres, expressly says "that where the treaty or act of Congress setting apart such reservation provides for the allotment of lands in severalty, in quantities in excess of those herein provided, the President, in making allotments upon such reservation, shall allot the lands to each individual Indian belonging thereon, in quantity as specified in such treaty or act," which is confirmatory of the position taken by the Chippewa Commission.

The Chippewas of the Mississippi, at the time of the making of the treaty of 1867, understood that not only each individual was entitled to 160 acres in severalty, but, in their tribal relations, to whatever might remain of the thirty-six townships which they had purchased from the United States.

The treaty of 1867 and the act of 1887 were not affected by the negotiations contemplated by the act of January 14, 1889, except giving permission to other Indians, having no interest heretofore in said reservation, to settle thereon.

During the negotiations the Commission had no doubts as to the correctness of the construction by them given to the treaty of 1867 and the acts of 1887 and 1889, and, with the approval of the President, they believed the case was closed. There were doubts as to the payment of the \$90,000, and as to the clause of the act of January 14, 1889, providing for "the payment of the interest that may accrue on the permanent fund." The Commission found it necessary to give their construction as to the intent of the act, in which the honorable Secretary of the Interior coincided and the President approved, and as to the first, your office executed the law as interpreted by the Commission. To the President, by the act of January 14, 1889, was to be submitted the proceedings appertaining to the negotiations, which were submitted through the honorable Secretary of the Interior in full, with the report and recommendations of the Commission, and after all had been carefully examined and by the Secretary indorsed, were approved by the President, which, in the minds of the Indians, was conclusive.

The acts of February 8, 1887, and January 14, 1889, in no way curtailed the number of acres to the individual parties to the treaty of 1867, as the quantity of land owned by them was, beyond question, largely in excess of the requirements; but, if there remained not enough to give to those admitted to participate, by their acceptance of the act of January 14, 1889, viz, 160, 80, and 40 acres each, they were to receive pro rata of what remained; but in no event were the original owners to pro rata with the recent participants.

The promises made to Indians were based upon the provisions of the treaty of 1867, upon the acts of February 8, 1887, and of January 14, 1889, and as the promises made and explanations given could not have escaped the attention of the President, after his approval I supposed the construction given and promises made were binding, and now see no reason to change the views then entertained.

I intended the Indians should understand by the representations made exactly what I said, viz, that those party to the treaty of 1867 should have in severalty 160 acres each; that those admitted as participants in the remaining part of the reservation should have, under the act of 1887, 160, 80, and 40 acres, provided there should be land enough, but if not, they should receive each his pro rata share.

If, however, in this I am in error, and in view of their unsettled condition and the retarding of the work of the Chippewa Commission, caused by instructions from your office of July 11 and August 17, 1891, allotting to each person 80 acres, I think it "expedient and desirable for a modification of the law, so as to comply with the present demand of the Indians," and that this be done as speedily as possible, for the disquiet now existing will seriously interfere with their progress, especially in removal, as well as in planting and other necessary work.

Very respectfully,

HENRY M. RICE,

*Late Chairman Chippewa Commission.*

Hon. T. J. MORGAN,

*Commissioner of Indian Affairs,*

*Interior Department, Washington, D. C.*

A BILL to provide for allotments to Indians on White Earth Reservation in Minnesota.

*Be it enacted by the Senate and House of Representatives of the United States in Congress assembled,* That the President of the United States be, and he is hereby, authorized to allot to each Chippewa Indian now legally residing upon the White Earth Reservation under treaty with or laws of the United States, in accordance with the express promises made to them by the Commissioners appointed under the act of Congress entitled "An act for the relief and civilization of the Chippewa Indians in the State of Minnesota," approved January fourteenth, eighteen hundred and eighty-nine, and to those Indians who may remove to the said reservation who are entitled to take an allotment under article seven of the treaty of April eighteenth, eighteen hundred and sixty-seven, between the United States and the Chippewa Indians of the Mississippi, one hundred and sixty acres of land, and said allotments shall be made, and patents issued therefor, in the same manner, and having the same effect, as is provided in the general allotment act entitled "An act to amend and further extend the benefits of the act approved February eighth, eighteen hundred and sixty-seven, entitled 'An act to provide for the allotment of land in severalty to Indians on the various reservations, and to extend the protection of the Commissioners of the United States over the Indians, and for other purposes,'" approved February twenty-eighth, eighteen hundred and ninety-one: *Provided,* That any allotments of less than one hundred and sixty acres heretofore made and not accepted by the Indians may be canceled by the Secretary of the Interior and new allotments of one hundred and sixty acres to each Indian entitled thereto may be issued in lieu of those canceled.